

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

GARRY L. TOLER,

Plaintiff,

v.

CIVIL ACTION NO. 5:17-cv-02382

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

On April 18, 2017, the Plaintiff, acting *pro se*, filed a *Claim for Damages, Injury, or Death* (Document 1), the same being construed as a Complaint by this Court. The Plaintiff subsequently filed two amended Complaints (Documents 6 and 11) on May 15, 2017, and July 18, 2017, respectively. Also before the Court are the original, amended, and second amended motions to dismiss filed by the United States of America (Documents 16, 20, and 21).

By *Standing Order* (Document 2) entered on April 18, 2017, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On December 5, 2017, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 28) wherein it is recommended that the Plaintiff's Complaints (Documents 1, 6 & 11) be dismissed without prejudice, that the United States' Motions to Dismiss (Documents 16, 20 &


21) be denied as moot, and that this matter be removed from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by December 22, 2017.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** the Plaintiff's Complaints (Documents 1, 6 & 11) be **DISMISSED WITHOUT PREJUDICE**, that the United States' Motions to Dismiss (Documents 16, 20 & 21) be **DENIED AS MOOT**, and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: January 3, 2018


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA